vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.3095 OF 1991

Doulu Naiku Gholap
r/at Parale Ninai, Tal.Shahuwadi
Dist.: Kolhapur ... Petitioner

V/s.

Madhuri Madhukar Prabhavalkar
through P.A.
Prabhakar Ramkrishna Prabhavalkar
r/at Parale Ninai, Tal.:Shahuwadi
Dist.:Kolhapur ... Respondent

Mr.Padmanabh Pise a/w Ms.A.R.S. Baxi for Petitioner
Mr.P.D. Dalvi for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **FEBRUARY 28, 2006**

ORAL JUDGMENT:

. The Petitioner claims to be the tenant of the Respondent's land bearing Survey Nos.106 and 107 situated at Parale Ninai, Taluka - Shahuwadi, District - Kolhapur. Proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act commenced. The Petitioner contends that he was unable to remain present on the stipulated date and indicate his willingness to purchase the suit lands. The Agricultural Lands Tribunal declared the purchase to be ineffective under section 32G(3). An enquiry under section 32P commenced after notice to the Petitioner. The Petitioner remained

absent. By an order passed on 31.10.1969, the Agricultural Lands Tribunal restored the possession of the suit lands to the Respondent.

2. The short question involved in this Writ Petition is whether the tenant can challenge the order passed under section 32P of the Bombay Tenancy and Agricultural Lands Act (for short, 'the Act') after 14 years on the ground that he had no intimation of the order passed under section 32G of the Act.

3. The undisputed facts of the case are as follows:

On 30.11.1964, the Additional Tehsildar and Agricultural Land Tribunal fixed the price of the land. A Tenancy Appeal was preferred by the Petitioner on 20.5.1986. This appeal, registered as Appeal Tenancy Appeal No.24 of 1986, challenged the order in section 32P proceedings under the Act. Another Appeal being Tenancy Appeal No.22 of 1986 was preferred by the Petitioner challenging he order passed under section 32G. Both the applications were decided by a common order by the Assistant Collector, Shahuwadi on 1.4.1987. The Assistant Collector allowed the Appeal No.24 of 1986 while partly allowing the other application and remitted the matter to the lower Court. Aggrieved by this

decision, the Respondent preferred Revision Application No.MRT-KP-144 of 1987 before the Maharashtra Revenue Tribunal. This Revision came to be allowed and the order passed by the appellate Court in Tenancy Appeal No.24 of 1986 was set aside. The order of the lower Court in the section 32P proceedings was confirmed. The Petitioner is aggrieved by this order of the Maharashtra Revenue Tribunal and has, therefore, preferred the present Petition.

4. It is submitted by the learned Advocate for the Petitioner that no intimation was given to the Petitioner regarding section 32G proceedings having culminated in an ineffective purchase. The Petitioner learnt of the order only when the possession was sought to be recovered from him in 1982. According to the learned Advocate, the order in the proceedings under section 32P was illegal, there having been no intimation to the Petitioner regarding the order passed in the section 32G proceedings. He submits that the delay in filing the appeal against the order passed under section 32P is because the Petitioner was not aware of any orders being passed and it was only when forcible possession of the suit land was sought to be taken that he became aware of the order. According to the Petitioner, an appeal had been preferred against the

proceedings commenced under section 32G of the Act and, therefore, no order under section 32P could have been passed till that Appeal was decided. The learned Advocate urges that the Revision Application ought not to have been allowed only on the ground that the Tenancy Appeal Nos.22 of 1986 and 24 of 1986 had been decided by a common order.

5. The learned Advocate by relying on the judgment of the Supreme Court in the case of *Mahadeo Vithoba Nikam v/s. Gajanan Pandurang Kulkarni,* **(1998) 9 SCC 716** submits that even if the tenant was not present when the proceedings under section 32G commenced, the Tehsildar ought to have gone into the merits of he case on the basis of the record. Had he done so, it would have been apparent that the Petitioner tenant had expressed his willingness to purchase the property.

6. Per contra, the learned advocate for the Respondent points out that the order passed under section 32G of the Act has not been challenged by the Petitioner at all and, therefore, it stands confirmed. The only order challenged is one passed under section 32P of the Act. The order has been passed on 31.10.1969 and is challenged by the Petitioner after 17 years. No application for condoning the delay in filing an appeal

was filed by the Petitioner. Therefore, urges the learned Advocate, the Revenue Tribunal had correctly allowed the Revision and confirmed the order passed by the Agricultural Land Tribunal. The learned Advocate submits that no notice is required to be issued to the tenant under section 32P proceedings as held by the learned Single Judge of this Court in *S.K. Thosar v/s. B.S. Beldare* **(Special C.A. Nos.1595 of 1969 and 1596 of 1969)** on 14.9.1972.

7. The provisions of section 32G are set in motion when the Tribunal publishes a notice in the prescribed form in each village within its jurisdiction calling upon the tenants, who under section 32 of the Act are deemed to have purchased the lands on 1.4.1957, landlords and other persons interested to appear before it on a stipulated date. If the tenant fails to appear or make a statement that he is willing to purchase the land, the Tribunal is expected to declare that the purchase is ineffective. An order declaring the purchase ineffective passed in default of the appearance of any party, must be communicated to the parties within 60 days. The party then may apply for review of the same. In the present case, there is no material on record to indicate that the Petitioner had showed his willingness to purchase the suit lands. Assuming he had

agreed, the Petitioner had remained absent when the Tribunal had passed the order. It is the Petitioner's case that this order of 30.7.1969 passed under section 32G of the Act was never communicated to him and therefore, the order is bad. In fact the Petitioner has contended that he came to know of the order having been passed only when the possession of the lands was sought to be taken in 1982. Even after the possession was sought to be taken, the Petitioner did not bother to file any review as provided for under section 32G of the Act. The tenancy appeal challenging the order passed under section 32G was filed only in 1986.

8. The reliance placed by the learned Advocate on the judgment of the Apex Court in the case of *Mahadeo Vithoba Nikam (supra)*, is of no avail. There is no material on record to indicate that the Petitioner had in fact shown his willingness to purchase the suit lands as required under section 32G.

9. Under section 32P of the Act, the Tribunal may suo motu or on an application direct that the lands in respect of which the tenant fails to exercise his right to purchase the land held by him within the stipulated time, whether the same has become ineffective under section 32G or 32M of the Act, dispose of the lands in

accordance with law. Accordingly, in the present case, after the order under section 32G had become final, the order under section 32P was passed on 31.10.1969. This order was challenged by the Petitioner by filing an Appeal in 1986, four years after the possession was sought to be taken.

10. The order passed under section 32G and by the Agricultural Lands Tribunal and the consequential order passed under section 32P have been challenged by the Petitioner have been challenged by the Petitioner by filing tenancy Appeal Nos.22 and 24 of 1986 respectively. Both the orders passed under section 32G as well as 32P are appellate under section 74 of the Act. However, under section 79, every Appeal must be filed within a period of 60 days from the date of the impugned order. The provisions of section 4, 5, 12 and 14 of the Indian Limitation Act, 1908 are made applicable for filing such appeals. In the present case, undisputedly, the Appeals have been filed long after the period of limitation. In fact, they have been filed after almost 17 years. Besides that, there is no application made for condoning the delay in filing the appeal. In such circumstances, the impugned order the

Maharashtra Revenue Tribunal in revision cannot be faulted. Reliance placed by the learned Advocate on the case of *Ragho Singh v/s. Mohan Singh & Ors.*, **(2001) 9 SCC 717** is apt. The Supreme Court in this case has held that an appeal filed before the Additional Collector beyond the period of limitation was liable to be dismissed in the absence of an application under section 5 of the Limitation Act for condoning the delay. The order in revision dismissing the appeals need not be interfered and the order is confirmed.

11. In such circumstances, the Writ Petition is dismissed. Rule discharged. No order as to costs.